



How the November election could alter the future of abortion

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Voters hoping for a Supreme Court that would roll back abortion rights and issue other conservative rulings are feeling pressure to support whoever the Republican presidential nominee is, even if he or she isn't their favorite.

When the White House switches hands a year from now, the nine justices will be older on average than when Bill Clinton, George W. Bush and Barack Obama became president. Four of the justices will be at least 78, making it possible that the next president could fill several vacancies.

And that prospect has ramped up pressure on voters, and particularly conservatives, who have been unhappy with how the court has swung on some big questions about Obamacare, abortion and other bioethical issues.

"If not the most important issue, [it's] one of the most important issues, because whatever Congress does, whatever the president does, the Supreme Court can always say no," said Tim Jost, a health law professor at Washington and Lee University.

Conservatives' most-hated ruling is the court's 1973 *Roe v. Wade* decision, which legalized abortion. While legal experts say it is more likely that a conservative-led court would allow more restrictions on the procedure rather than ban it altogether, getting the *Roe* decision reversed is a victory of which abortion foes dream.

"The *Roe v. Wade* decision was one decision that had ramifications we're still marching about," Russell Moore, president of the South Baptist Convention's Ethics and Religious Liberty Commission, told the Washington Examiner. "Who knows what is facing us in the next couple of years?"

The oldest justice on the court is also perhaps its most liberal: Ruth Bader Ginsburg, a Clinton appointee who will turn 83 in March. If she decides to step down, and a Republican president replaces her with a conservative, it's possible to imagine a court upholding new state abortion

regulations, such as banning the procedure midway through pregnancy or governing how clinics and providers must operate.

"If Ginsburg was replaced with a justice who disagrees with Roe, that could signal an opportunity for some movement," said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute.

The Supreme Court is hearing a Texas law next month that requires abortion facilities to meet ambulatory surgical center standards and for doctors to get hospital-admitting privileges. But a number of other abortion restrictions will remain for the court to decide, such as whether states can ban abortion after 20 weeks of pregnancy or require medication abortions to be administered following federal protocols.

Even as the presidential primary elections get started, GOP voters are far from unified on which candidate they would prefer for president. But regardless of whether Donald Trump, Ted Cruz, Marco Rubio or someone else wins the nomination, voters want a conservative to fill any Supreme Court vacancies. And some contenders are playing to that motivation.

"The next president will have the awesome responsibility to pick up to four Supreme Court justices that will decide issues of life and religious liberty," Carly Fiorina told abortion protesters at the March for Life last month.

"Make no mistake, ladies and gentlemen," Fiorina added. "This next election is a fight for the character of our nation."

Late last year, Cruz told Bloomberg News that he would ensure every one of his Supreme Court nominees was a "principled judicial conservative." "Unlike many of the other candidates, I will be willing to spend the capital," Cruz said.

But Trump's recent suggestion that he would nominate his sister, Maryanne Trump Barry, is troubling to some conservatives. Trump has said that Barry, who was a Clinton appointee, would be a "fantastic" and "phenomenal" justice.

Barry, who sits on the U.S. Court of Appeals for the Third Circuit, wrote a 2000 opinion striking down New Jersey's partial-birth abortion ban, which also appeared to endorse infanticide.

That kind of decision would almost certainly prompt major conservative pushback should Trump try to nominate his sister to the high court.

More than abortion regulations are at stake. Physician-assisted suicide has garnered more attention in recent years, as California last year became the fifth state to allow it and other states have taken up legislation considering it.

The Supreme Court ruled in 1997 that assisted suicide isn't a protected liberty under the Constitution. While the court appeared to leave the door open for states to pass their own laws,

some legal experts think the issue could snowball enough to gain its attention once again in the next decade.

Casey Mattox, senior counsel for the conservative nonprofit group Alliance Defending Freedom, said legalizing assisted suicide could open the door for lawsuits by doctors who are claiming a right of conscience not to help their patients die for religious conviction. He said he guessed the court could take up the issue in the next five or six years.

"You establish [physician-assisted suicide] in a few states and then you can say to the Supreme Court, 'There's a pattern developing; you should go ahead and rule on this,'" Mattox said.

There are also questions about what kinds of birth control health providers can be required to give patients or for which employers can be required to pay.

The Supreme Court is set to decide this year whether the Obama administration has sufficiently excluded nonprofits from a birth control coverage requirement in the Affordable Care Act. But the case doesn't cover whether businesses also have sufficient conscience exemptions, an issue that could come up before subsequent courts.

And in Washington state, there's a case over whether pharmacies can be required to sell birth control such as the morning-after pill, which some believe to cause abortions, or whether they instead can refer customers to other pharmacies. Alliance Defending Freedom, which is involved in *Stormans v. Wiesman*, has asked the Supreme Court to hear the case this term, but the issue could come up again if the justices reject it this time around.

"Looking at the composition of the court, I think it's very likely the next president will appoint two or more justices at least," Mattox said. "So it really makes this election all the more critical."